



JENNY R. PITTMAN
Counsel for ORS

Office of Regulatory Staff
1401 Main Street
Suite 900
Columbia, SC 29201
(803) 737-0800
ORS.SC.GOV

April 21, 2021

VIA ELECTRONIC MAIL

Jocelyn G. Boyd, Esquire
Chief Clerk & Administrator
Public Service Commission of South Carolina
101 Executive Center Drive, Suite 100
Columbia, South Carolina 29210

RE: Cherokee County Cogeneration Partners, LLC, Complainant/Petitioner v. Duke Energy Progress, LLC and Duke Energy Carolinas, LLC, Defendant/Respondent
Docket No. 2020-263-E

Dear Ms. Boyd:

The South Carolina Office of Regulatory Staff (“ORS”) submits this letter in response to Cherokee County Cogeneration Partners, LLC’s (“Cherokee”) request (“Request”) to further extend the terms of the 2012 power purchase agreement (“2012 PPA”) between Cherokee and Duke Energy Carolinas, LLC (“DEC”) during the pendency of the proceedings in this Docket.¹ In order to protect DEC’s customers from increased purchased power costs due to further extension of the 2012 PPA, ORS objects to further extension without proper safeguards to protect DEC customers from the increased cost of power purchased from Cherokee.

The contractual dispute between Cherokee and DEC and Duke Energy Progress, LLC (collectively “Duke Energy”) may impact the level of purchased power expenses incurred by Duke Energy and recovered, through rates, from all classes of Duke Energy’s customers. Under South Carolina’s Fuel Clause, a utility’s customers are ultimately responsible for the cost of power purchased by a utility from a qualifying facility. S.C. Code Ann. § 58-27-865.

ORS previously requested any extension of the 2012 PPA terms be subjected to a true-up. A true-up would hold DEC’s customers harmless if the subsequent rates determined by the Commission in any proceeding in this Docket are less than those rates paid by Duke Energy resulting from the extension(s) of the current 2012 PPA. In Order No. 2020-846, the Commission temporarily extended the terms of the 2012 PPA until April 30, 2021, reserving “the right to

¹ See Letter filed in this Docket on behalf of Cherokee on April 9, 2021.

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consider whether or not it is appropriate to subject the rates charged and/or paid by any Party during this 120-day period to a true-up.”

ORS objects to further extension of the 2012 PPA absent a determination by the Commission that the rates charged and/or paid by any Party are subject to a true-up such that Duke Energy and DEC’s customers do not assume the risk that belongs to Cherokee. In the event the Commission determines that going forward the price paid by DEC to Cherokee for the power generated by Cherokee is less than the price paid under the 2012 PPA, ORS requests that the dollar amount attributed to the incremental overpayment by DEC to Cherokee due to the extension of the terms of the current 2012 PPA since January 1, 2021 be credited or refunded to existing DEC customers in a manner determined by the Commission. As stated in Duke Energy’s letter filed April 20, 2021, DEC’s customers will have paid close to \$1,000,000 over the current avoided cost rates when the current 2012 PPA extension expires on April 30, 2021.² The estimate of the overpayment is not insignificant and neither DEC nor DEC’s customers should be harmed if the Commission ultimately determines the rates to be paid to Cherokee under a new PPA are less than the 2012 PPA. Cherokee should bear the economic risk of any extension of the 2012 PPA – not Duke Energy or DEC’s customers.

Additionally, ORS objects to an indefinite extension of the 2012 PPA. If an extension of the 2012 PPA is granted, ORS respectfully requests that any subsequent extension be for a finite amount of time and subject to a true-up.

Sincerely,

s/ Jenny R. Pittman

Jenny R. Pittman

cc: David Butler, Esquire, via email
JoAnne Wessinger-Hill, Esquire, via email
All other parties of record, via email

² See Letter filed in this Docket on behalf of Duke Energy Carolinas, LLC and Duke Energy Progress, LLC on April 20, 2021.